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## Ninth Circuit Raises the Bar for Pleading Scienter

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On November 26, 2008, the U.S. Court of Appeals for the Ninth Circuit issued its decision in *Glazer Capital Management v. Magistri*. (1) The decision addresses several important aspects of pleading scienter in securities fraud actions, including the so-called "collective scienter" doctrine.

### I. Background and Procedural History

InVision Technologies Inc. ("InVision") was a publicly traded company that manufactured and sold explosives detection systems used to screen luggage at airports. In March 2004, it announced its anticipated merger with General Electric ("GE") and appended the corresponding merger agreement to its annual report filed with the U.S. Securities and Exchange Commission ("SEC"). That agreement, which was signed by InVision CEO Sergio Magistri ("Magistri"), included warranties and representations including, among others, that InVision was in compliance with all laws ("general warranty") and, specifically, in compliance with the books and records and anti-bribery provisions of Sections 13(b) and 30A of the Securities Exchange Act of 1934, respectively. (2)

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